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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,912	07/30/2003	David B. Jalbert	P 303291 193REG	6089
909	7590	10/20/2004	EXAMINER	
PILLSBURY WINTHROP, LLP			DURAND, PAUL R	
P.O. BOX 10500			ART UNIT	
MCLEAN, VA 22102			PAPER NUMBER	
			3721	

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

SW

<b>Office Action Summary</b>	Application No. 10/629,912	Applicant(s) JALBERT ET AL.	
	Examiner Paul Durand	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 7/22/04.
- 2a) ☐ This action is FINAL.
- 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-59 is/are pending in the application.
- 4a) Of the above claim(s) 55-59 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-54 is/are allowed.
- 6) ☒ Claim(s) 1-7 and 11 is/are rejected.
- 7) ☒ Claim(s) 8-10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 8/19/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) ☐ All    b) ☐ Some \*    c) ☐ None of:
    - 1. ☐ Certified copies of the priority documents have been received.
    - 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/9/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of invention I in the reply filed on 10/14/2004 is acknowledged. The traversal is on the ground(s) that the applicant asserts that there would be no burden of search on the non-elected inventions.

The examiner agrees in part with the applicant's arguments and will join claims 12-26 into invention I to be examined on the merits along with claims 1-11 and 27-54. Claims 55-59 will stand withdrawn with traverse.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-7 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaneko (US 5,240,161).

In regard to claims 1 and 11, Kaneko discloses the invention as claimed including a fastener driving tool comprised of main body portion 2, magazine assembly 7, nose portion 4, with fastener drive track 3, magazine assembly 7, with guide track in the form of channel 19, actuation means in the form of pneumatic fitting and trigger (no numbers given) and a reciprocating feed mechanism in the form of pressing member 21 with pawls 21a and 28a and last nail stop 20b (see Figs. 1,2,4,5 and C3,L40 – C4,L64).

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In regard to claims 2 and 3, Kaneko discloses the invention as claimed including nails W1 and W2 with a shank and head portion mounted on flexible belt, and the last fastener retaining portion 20b arcuate surface 20a, which engage the last fastener

In regard to claims 4-7, Kaneko discloses the invention as claimed including nose portion drive track door 16, with the retention member formed in recess 16a, pivotally connected to door 16 by mount 22a, and is urged toward channel 19 when closed (see Figs. 1,2,4,5 and C2,L54 – C3,L60).

#### ***Allowable Subject Matter***

4. Claims 8-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. Claims 12-54 are allowed.

#### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Frommelt, Ogawa, Crutcher, Singer et al, Mukoyama et al, Perra, Smolinski and Miller et al have been cited to show devices having similar structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 703-305-4962. The examiner can normally be reached on 0730-1800, Monday - Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on 703-308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paul Durand  
October 14, 2004

A handwritten signature in black ink, appearing to read 'Rinaldi I. Rada', followed by a horizontal line extending to the right.

Rinaldi I. Rada  
Supervisory Patent Examiner  
Group 3700